

COKER et al
Appl. No. 09/868,242
October 19, 2004

In particular, Applicant's specification as originally filed presents a clear discussion of method steps as well as an example of the method steps, in accordance with the present invention. See for example, the discussion on page 7, line 28 to page 9, line 24 and especially the example discussed on page 9, lines 19-24. Even if applicant presented a flow-chart, it could contain nothing more than the steps set out in the above referenced portion of applicants' specification. Applicant has confirmed that the above-identified description is more than sufficient to enable one of ordinary skill to understand and practice the presently claimed invention. How or in what manner the Examiner believes the application admits of a drawing is not understood. Applicant has claimed no structure in any method claim and indeed each claim is directed to a number of method steps. Applicant has identified no structure that could be identified in any drawing which would be supported by applicants specification and thus avoid a "new matter" objection.

Accordingly, clarification of what the Examiner believes should be illustrated in the present application is respectfully requested. Further, the Examiner is respectfully requested to identify how the submission of a drawing of anything other than a flow chart could fail to introduce "new matter." Finally, should a flow chart be requested, the Examiner is requested to indicate how or why such a flow chart would contain any method step which is presented any more clearly than the discussion of the method steps in the above referenced portion of Applicants specification.

To the extent the Patent Office objects to the drawing or lack of drawing, this objection would appear to be an indication that the originally filed specification and

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drawings (transmitted from WIPO) do not meet the formality requirements of the U.S. Patent and Trademark Office. The Patent Office is reminded that the U.S. Patent and Trademark Office must comply with all articles of the Patent Cooperation Treaty (PCT) including Article 27. It has been held that:

"if the rule and interpretation of the PTO conflicts with the PCT, it runs afoul of Article 27 of the PCT which provides in part:

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations."
Caterpillar Tractor v. Commissioner, 231 USPQ 590, 591 (EDVA 1986).

The Patent Office has referenced this decision in the Official Gazette dated September 9, 1986 (1070 TMOG 5).

As a consequence, the Patent Office (including the Chief Draftsman's Office) may not require drawing corrections (including changes in paper size, margins, etc.) as long as the originally submitted documents comply with the PCT requirements. Inasmuch as the lack of drawings met the PCT requirements (the application is not forwarded until it meets the PCT requirements.). Therefore, the objection to the lack of a drawing in this method patent is respectfully traversed and reconsideration thereof is respectfully requested.

Having responded to the rejection noted in the outstanding Official Action, it is submitted that the claims are in condition for allowance and notice to that effect is respectfully solicited. Applicants file concurrently herewith the Appeal Brief appealing the rejection of claims 1-3, 7 and 9-11 and therefore does not include the duplicate

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arguments of patentability of those claims over the prior art of record in this Requests for Reconsideration.

In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of these claims, he is respectfully requested to contact applicant's undersigned representative.

Respectfully submitted,

NIXON & VANDERHYE P.C.

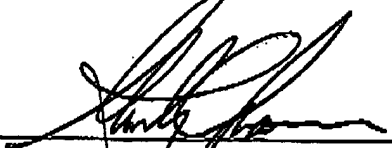
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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.


Stanley C. Spooner
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10/19/04
Date